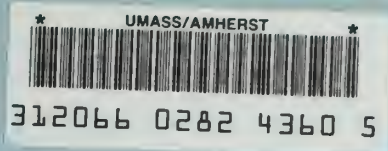


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FINAL REPORT
OF THE
COMMITTEE ON JUDICIAL RESPONSIBILITY

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To the Honorable Chief Justice and
Justices of the Supreme Judicial Court

In accordance with Supreme Judicial Court Rule 3:17, the members of the Committee on Judicial Responsibility (Committee) respectfully submit for the consideration of the Chief Justice and Justices of the Supreme Judicial Court their final report of the Committee's activities.

This report is submitted in two parts. The first covers the time period from July 1, 1978, through October 10, 1979, which represents the period between the submission of the last Committee report and the date of the conclusion of Committee business. The second section presents a summary of Committee activity from its inception in 1977.

Part I

MEMBERSHIP OF THE COMMITTEE

The composition of the Committee has remained constant during the time period covered by this section with one exception: on August 17, 1978, Justice David A. Rose submitted his resignation from the Committee to the Chief Justice of the Supreme Judicial Court. The justices of the Supreme Judicial Court appointed Justice Sanford Keedy of the Probate Court to serve the remainder of Justice Rose's unexpired term (to February 1, 1980). The Committee then consisted of:

<u>Lay Members</u>	<u>Term</u>
Archie C. Epps, III	February 1, 1979
Florence R. Rubin (Vice-Chairman)	February 1, 1980
Carolyn Dik	February 1, 1981

<u>Lawyer Members</u>	<u>Term</u>
Richard D. Gelinas	February 1, 1979
Allan G. Rodgers (Chairman)	February 1, 1980
John M. Harrington, Jr.	February 1, 1981

<u>Judicial Members</u>	<u>Term</u>
Edith W. Fine (Superior Court)	February 1, 1979
Sanford Keedy (Probate Court)	February 1, 1980
Elbert Tuttle (District Court)	February 1, 1981

On July 27, 1978, the Committee was notified of the directive by the Justices of the Supreme Judicial Court that the members of the Committee were to continue their activities until such time as the members of the statutory Commission on Judicial Conduct were appointed and qualified, and the business of the Committee was concluded.

MEETINGS

From July 1, 1978, through October 10, 1979, the Committee met as a body on nineteen occasions. All meetings prior to August 15, 1979, were conducted in the Consultation Room or the Lawyer's Waiting Room of the Supreme Judicial Court. Subsequently, meetings were held at the offices of the Commission at 44 School Street in Boston.

SCREENING PANELS

Because the Committee became current in its initial consideration of pending matters prior to November, 1978, screening panel meetings were suspended and initial screening was conducted by the Committee as a whole.

The statutory Commission on Judicial Conduct (Commission) met for the first time on December 4, 1978. Thereafter no new Committee matters were opened.

STAFF

John F. Burke, Administrative Assistant to the Supreme Judicial Court, continued to serve as part-time secretary to the Committee until March, 1979, when Stephen M. Limon was appointed as the full-time Executive Secretary to the Commission. Mr. Burke continued to deal with most of the pending Committee cases during the period of transition from Committee to Commission. In May, 1979, Mr. Limon assumed full responsibility for the five Committee matters still pending. Clerical and secretarial services for the Committee were provided by Ms. Margaret Kelly, Ms. Jane Mullaney, and Ms. Randi Ring, employees of the Office of the Administrative Assistant to the Supreme Judicial Court, and by Ms. Ingrid S. McLean, Administrative Secretary for the Commission. The Committee wishes to express its appreciation of the services rendered on its behalf by Mr. Burke and his staff.

SPECIAL COUNSEL AND INVESTIGATORS

The Justices of the Supreme Judicial Court were not requested to appoint any attorneys to serve as special counsel in matters pending before the Committee during the period covered by this report. However, the Committee wishes to express its appreciation of the Justices' prompt cooperation in the appointment of special counsel in the past, and of the willingness of those who were appointed as special counsel to assume their difficult and sensitive assignments as a public service without compensation. ✓

STATUS OF THE COMMITTEE'S DOCKET

All matters on the Committee docket have been considered and disposed of, save three. These three matters were tabled, and no further action is contemplated. ✓

Chart I indicates the activity of the Committee during this reporting period:

CHART I

Cases Pending Prior to 7/1/78	17
Matters Filed	22
Dismissed	30
Withdrawn	1
Disposed of by Other Means	8
Awaiting Screening	0

The eight matters which appear in the above chart in the category of "disposed of by other means," during the time period covered by this report, break down as follows:

- ✓ 1 During the entire period of its operations, the Supreme Judicial Court appointed seven attorneys to serve as special counsel to the Committee. Although such special counsel served on a pro bono basis, they were entitled to be reimbursed for necessary expenses incurred in the performance of their assignments. Necessary expenses in a number of instances included the hiring of paid investigators.
- ✓ 2 Two matters were tabled when the judges involved resigned their respective offices. One matter, involving a general inquiry on the subject of nepotism and favoritism, also was tabled by the Committee.

CHART II

Recommendation to the Supreme Judicial Court	3	1
Informal Adjustment	4	4
Tabled		3

SOURCES OF COMPLAINTS

The vast majority of complaints came, as in the previous reporting periods, from dissatisfied litigants or their relatives. In many instances, these complainants proceeded in court without the benefit of counsel. Most matters presented to the Committee by such complainants raised issues of findings of fact, rulings of law, or discretionary acts not properly reviewable by the Committee in the absence of a showing of improper motivation or a pattern of illegal conduct.

The Board of Bar Overseers (Board) occasionally referred to the Committee complaints arising out of the practice of law by judges. It was the policy of the Committee that unless such matters raised serious questions as to the integrity and competency of judges, the Committee would defer to the Board in such matters. All matters referred to the Committee by the Board during this reporting period were referred back to the Board for their consideration.

Relatively few matters were brought to the Committee's attention by individual lawyers or the organized bar.

The remainder of the matters brought before the Committee, a small percentage of its caseload, came to its attention from observers of court proceedings, judges, prosecutors, and news media reports.

NATURE OF COMMITTEE MATTERS

Many of the matters considered by the Committee arose out of small claims, domestic disputes, criminal prosecutions, and civil litigation arising out of neighborhood disputes, landlord-tenant disputes, contractual disputes and the like.

3/ In the Matter of Margaret C. Scott, Mass. Adv. Sh. 460, N.E. 2d 218 (1979).

4/ All four of the matters informally adjusted involved the same judge.

These matters were extremely important to the complainants, and often involved personal and emotional issues.

In this context, many of the matters presented to the Committee involved dissatisfaction or disagreement with judges' rulings of law, findings of fact or exercises of discretion - matters not ordinarily properly reviewable by the Committee. A number of matters were filed by plaintiffs in small claims actions, who wished to appeal the judge's decision, but who were precluded from doing so by G.L. c. 218 §23. In addition, inquiry into some complaints indicated that the root of the complainant's dissatisfaction rested with the performance of his or her lawyer, or a failure of the lawyer to explain to the complainant the nature and limitations of the legal action taken on his or her behalf.

Part II

The Committee on Judicial Responsibility met for the first time on February 17, 1977. Subsequently, the Committee met on fifty-seven occasions, concluding its business on October 10, 1979.

MEMBERSHIP OF THE COMMITTEE

The original nine-person Committee consisted of:

Edith W. Fine	Judicial Member (District Court)
Henry M. Leen	Judicial Member (Superior Court)
David A. Rose	Judicial Member (Appeals Court)
Florence R. Rubin (Vice-Chairman)	Lay Member
Archie C. Epps, III	Lay Member
Carolyn Dik	Lay Member
Allan G. Rodgers (Chairman)	Lawyer Member
Richard D. Gelinas	Lawyer Member
William G. Young	Lawyer Member

During the course of its nearly three year existence several changes in membership occurred. Three of these changes became effective on February 1, 1978: John M. Harrington, Jr., replaced Mr. Young, who resigned his lawyer-member position upon his appointment to the Superior Court; Justice Fine assumed Justice Leen's judicial member position upon his retirement from the bench and her appointment to the Superior Court; and Justice Elbert Tuttle of the Framingham District Court succeeded Justice Fine in the vacated judicial member position. On August 17, 1978, Justice Rose, anticipating being recalled to the Appeals Court, suggested to the Supreme Judicial Court that he be replaced by a Justice representing the Trial Court at such time as the initial appointments to the Commission on Judicial Conduct would be made. Accordingly, Justice Sanford Keedy of the Probate Court was appointed to succeed Justice Rose on November 13, 1978. Membership subsequently remained constant until the conclusion of Committee business.

COMMITTEE ACTIVITY

Chart I indicates the activity of the Committee during the course of its proceedings:

CHART I

	2/1/77 to 6/30/77	7/1/77 to 12/31/77	1/1/78 to 6/30/78	7/1/78 to 10/10/79	TOTAL
Matters Filed	68	52	52	22	194
Dismissed	19	39	68	41	167
Withdrawn	1	4	5	1	11
Disposed of by					
Other Means	0	6	2	8	16
Awaiting Screening	40	9	0	0	--
Other Pending Cases ¹ ✓	8	31	17	0	--

The total of sixteen matters which appear in the above chart in the category of "disposed of by other means," break down as follows:

CHART II

Recommendations to the Supreme Judicial Court	2✓
Informal Adjustment	3✓
Tabled	5✓
Referred to the Board of Bar Overseers	3✓
	4✓

An analysis of Charts I and II supports the following observations:

1. The incidence of matters brought to the attention of the Committee was constant until the final reporting period. The decline during this most recent period may be attributed to the establishment of the Commission and the concomitant closing of the Committee docket.
2. The number of matters awaiting initial screening was reduced to zero, indicating that the Committee was current in its activities.

- 1✓ Other pending cases included matters awaiting decision of whether or not to investigate, matters under investigation, and matters awaiting disposition.
- 2✓ These three matters involved two judges. See: In the Matter of Margaret C. Scott, Mass.Adv.Sh.460(1979), 386 N.E. 2d 218 (1979), and In the Matter of Robert M. Bonin, Mass.Adv.Sh.1936(1978), 378 N.E.2d 669 (1978).
- 3✓ Four of these five matters involved the same judge, and were disposed of in a single informal adjustment.
- 4✓ See Part I, Sources of Complaints


3. More than ninety-two percent of all matters filed with the Committee were either dismissed or withdrawn.^{5/}

It should be noted that numerous inquiries made to the Committee staff did not result in the filing of complaints. These include:

- a. Instances wherein information, explanations, and forms were provided, but the complainant failed to formally complain to the Committee;
- b. Instances wherein complainants were referred to other agencies for information or action; and
- c. Instances wherein callers or visitors were informed that their complaints came neither within the purview of the Committee, nor within the jurisdiction of any other agency.

Respectfully submitted on behalf of the Committee,


Allan G. Rodgers, Chairman


Florence R. Rubin, Vice-Chairman

^{5/} The number and percentage of matters not withdrawn or dismissed does not accurately reflect the number or percentage of judges involved in such matters. In some instances they include more than one judge.

